



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2024-000880
First-tier Case Number: PA/51102/2023
LP/02562/2023

THE IMMIGRATION ACTS

**Decision & Reasons Promulgated
On 12 September 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**KA
(Anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Mustafa, Counsel instructed by Local Solicitors Ltd
For the Respondent: Ms S Lecointe, Home Office Presenting Officer

DECISION AND REASONS FOR FINDING AN ERROR OF LAW

Heard at Field House on 29 August 2024

The Appellant

1. The appellant is a citizen of Morocco born on 20 July 1981. He appeals against a decision of the respondent dated 7 February 2023. By that decision the respondent refused the appellant's application for international protection. The appellant left Morocco in or about 2007/08 and after travelling to a number of European countries, he arrived in the United Kingdom in or about early 2018. He claimed asylum on 24 July

2019 after coming to the attention of the police who, he says advised him to claim.

2. **Anonymity.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials KA. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant.

Failure to comply with this order could amount to a contempt of court.

The Appellant's Case

3. The appellant argued that he was at risk from his cousin who lives in Morocco. He had an arrangement with his cousin to split the profits of large decorating and maintenance jobs the pair undertook. He was paid 7-8 million dirham for one particular job that his cousin worked on. He refused to share the profits as normal with his cousin. He subsequently received threats of violence from the cousin and had to go into hiding in Casablanca before leaving for Europe. The cousin asked the appellant's friends of the appellant's whereabouts. His cousin was very powerful and the Moroccan authorities would not protect the appellant from the cousin.

The Proceedings

4. The First-tier Tribunal dismissed the appellant's appeal finding the appellant not to be a credible witness. Unfortunately there were a number of errors in the determination such that I set it aside in a determination dated 2024. Attached to this determination is a copy of my error of law decision. No findings of fact were preserved and the case was retained in the Upper Tribunal for re-hearing.

The Hearing Before Me

5. At the hearing the appellant attended to give oral evidence through a court appointed Arabic interpreter. He adopted his witness statement dated 15 August 2023 in which he explained that he employed his cousin, they were not partners, but after completing a particularly large contract his cousin demanded a share of the profits. When he refused to agree to this, his cousin attacked him and they fought. After that the appellant went to Casablanca where he hid.
6. In cross-examination he said that he left Morocco in 2006 and went to Bilbao in Spain for a year. He did not work there but had some money he had brought with him from Morocco. In Spain the appellant heard from mutual friends that the cousin knew where he the appellant was. He left Spain and went to France where he did decorating work. Before coming to the United Kingdom he also worked in Italy, Germany and Belgium. He would travel from one country to another in friends' cars (because he had no valid documents) looking for work. He came to the United Kingdom by

lorry with about £600 to £700 in cash to work and escape his cousin. He did not think about informing the United Kingdom police of his arrival as he did not know about asylum procedures until he entered the United Kingdom. He was frightened that if he approached the police they would arrest him.

7. Since arriving here, he had worked in various markets. He keeps in touch with his father in Morocco to whom he speaks over the telephone. He had changed his FaceBook page in the United Kingdom and his friends could no longer contact him on that. He had no documentary evidence of his social media accounts. About a month after arriving in the United Kingdom he started work selling children's toys and he worked as a hairdresser. Someone reported the appellant to the police and he was arrested. The police found some cannabis on him but it was for his own use, he was not selling it. The £1500 found in his possession at that time was from work not selling drugs. It was not shown that he had paid tax or National Insurance in his wage slips because he was self employed and paid the tax himself.
8. In answer to my questions, the appellant said that his cousin was still in Morocco. The appellant did not know if the cousin had ever left Morocco. He had not seen his cousin since leaving the country. I asked the appellant why his cousin might still be adversely interested in the appellant after 17 years of no contact. The appellant was asked this three times but did not answer the question saying only that his cousin had been following him.

Closing Submissions

9. For the respondent reliance was placed on the reasons for refusal letter dated 22 January 2023. The respondent did not accept in the letter that the appellant had given a credible account and he had not given a credible account today. There was no convention reason for claiming asylum in the United Kingdom. There was no evidence that the appellant's cousin was influential or that he put the appellant at any risk. There was no evidence that the appellant had been chased by the cousin across Europe or that the appellant had friends who were keeping the appellant informed about the cousin's actions. The appellant's cousin was still in Morocco and after 17 years was getting on with his life. The appellant's evidence was that he went from country to country working illegally but the reason he moved on each time was because his work finished and he needed to find other work not fear of the cousin.
10. The appellant's evidence was not supported by any documentary evidence. The appellant had not been truthful. The appellant was in the United Kingdom illegally until discovered by the police. He worked before he was detained by the police but did not bring himself to the attention of the United Kingdom authorities. When he was discovered by the police he claimed asylum purely to stop removal. Ever since then the appellant has been working. He has received large sums of money which do not correspond to the payslips he has produced. The appellant was an

economic migrant here to work and get money and for no other reason. The appeal should be dismissed.

11. For the appellant counsel relied on the skeleton argument in the case. The respondent accepted some of the factual matrix in this case. The appellant had been in hiding in Morocco. This was at the core of the claim. The dispute in the case was about the sufficiency of protection and the ability of the appellant to internally relocate. He had given a detailed account in his witness statement which addressed all of the concerns in the refusal letter. The appellant was at risk from his cousin. The appellant's evidence about his concerns was plausible and credible. He knew no one when he came here who could help him about asylum. That was consistent with the last line of paragraph 41 of his witness statement where he refers to the police advising him to apply for asylum. He had explained that he had some knowledge about making a claim for asylum from friends but before he could make a claim he was arrested. It was a matter for the Upper Tribunal to decide on the appellant's credibility.
12. The appellant had entered the United Kingdom without documents and thought he would be arrested if he was found. That caused the delay in making the claim for asylum. He had addressed the section 8 point raised by the respondent. The core of the claim had been accepted by the respondent. The issue was the adverse interest by the cousin and why after 17 years the cousin would still be interested in the appellant. The cousin was trying to know the whereabouts of the appellant through friends. If the appellant went back to Morocco the question was whether the cousin would have an interest in the appellant or not. Counsel indicated that that was a matter he would leave to the tribunal.
13. There was no need for the appellant to produce supporting evidence if the account itself was credible. The reason for this rule was because of the difficulties which an asylum seeker would face in bringing a claim. This appeal could be should be allowed under article 3 of the human rights Convention. In relation to article 8 there was a claim by the appellant that he had a protected private life. He had been in the United Kingdom since 2017. It was a long time since he had left Morocco and he would have obstacles in his way against reintegration. The effect of dismissal of this appeal would bring harsh consequences upon the appellant.

Discussion and Findings

14. Following submissions I reserved my decision which I now give. This appeal did not concern the refugee convention but rather was a claim to fear a non- state actor, his cousin. The burden of proof of showing that the appellant faces treatment contrary to article 3 of the Human Rights Convention (prohibition of torture) is on the appellant and the standard of proof is that of a reasonable likelihood or chance, the so called lower standard. In relation to the claim under article 8 (right to respect for private and family life) the burden is the same but the standard is the civil standard of the balance of probabilities.

15. The appellant says that approximately 17 years ago he fell out with his cousin who was also his employee over the division of funds from a painting and decorating job which they worked on in Morocco. Although the respondent does not accept the appellant's credibility in relation to this incident the appellant was not cross-examined before me on the point. The appellant argues that this is the core of his claim but after 17 years in which the appellant has been outside Morocco travelling around Europe working the appellant still claims that there is a risk to him if he were to return to Morocco.
16. The question of the appellant's credibility lies at the heart of this appeal. It is difficult to see how the appellant can maintain his claim that after 17 years in which he has not seen or spoken to his cousin the cousin still maintains an adverse interest in the appellant if he ever did have one. The cousin may very well be disappointed that the appellant took what the cousin thought was an unduly large share of the profits of this particular job. This may (to the lower standard) have led to fisticuffs between the appellant and the cousin but that was a very long time ago and there has been no contact between the two of them since. The appellant says that he has travelled around Europe to escape the cousin. Beyond that bare assertion however there is no evidence to suggest that there was any need for the appellant to move from one country to another (except perhaps to look for more work) given the absence of threats from or contact with the cousin.
17. What the evidence strongly indicates is that the appellant is an economic migrant who has travelled extensively in Western Europe moving from one job to another. The appellant when asked why he could not report his cousin to the police was noticeably vague referring in general terms to his claim that the cousin was from a very powerful family who had influence. Again there is only the appellant's own bare assertion to support such a claim. There is no documentary evidence to suggest that the cousin or his family even exist let alone are in a position to influence the actions of the Moroccan authorities. The appellant has had a very long time to collect evidence to support his claim and he has been put on notice of the respondent's objections. Whilst the appellant argues that he has dealt with the respondent's objections to his claim in his witness statement, a careful reading of the witness statement shows that it amounts to no more than denials by the appellant and assertions of his own credibility. At paragraph 38 for example he merely maintains that his cousin's family are important without providing any evidence in support.
18. Beyond these assertions there is nothing by way of documentary evidence to support any of the appellant's claims, some of which are contradictory as the appellant himself acknowledges, see paragraph 37 of the witness statement. Counsel for the appellant was correct to point out that corroboration is not a requirement or necessary in asylum or other international protection claims. However the Court of Appeal in **TK Burundi [2009] EWCA Civ 40** at paragraph 16, make clear that where evidence could be reasonably obtained yet it is not the tribunal is entitled

to draw an adverse conclusion from the absence of that documentation. The appellant says that he has been in contact with his father by telephone and he was evidently in contact with his friends before he came to the United Kingdom yet there is no evidence from any of these sources to confirm any thing what the appellant says about the cousin or the cousin's motivations.

19. The appellant acknowledges that his family are still living in the same house in Morocco. He says he has not contacted them because he did not want to bother them. The difficulty with this claim is besides its implausibility, the length of time which has gone by. Why communicating with his father does not bother the family but contacting other members such as his mother would do is not at all clear from the appellant's evidence. I do not accept that the appellant has failed to contact his family to obtain supporting evidence because he did not want to bother them. I find that the appellant has not produced supporting evidence because there is none to produce. There is none because the appellant has fabricated a claim in order to avoid removal.
20. The appellant only made his claim for asylum after he was arrested by the police, that was after a very long period of time in which he had been living and working unlawfully in this country. Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 deals with the question of delay in claiming international protection. It should not be a starting point for the tribunal's findings but evidence of delay can be weighed in the balance when the tribunal assesses the overall credibility of an appellant and his claim. In this case there is no good reason why if the appellant came to the United Kingdom as he says to seek protection he did not bring himself to the attention of the authorities considerably earlier than he actually did. Had he not been arrested by the police it is not at all clear when if ever he would have claimed. He seems not to have claimed in the other European countries he passed through while working there nor in countries such as Germany did he have any threats from his cousin. These are not the actions of someone who seeks protection because of a genuinely held fear of persecution but they are the actions of an economic migrant who is aware that he has no right to work in the United Kingdom.
21. The appellant has not given a good reason for his failure to contact the Moroccan authorities. He claims that they would not help him if he did approach them but since he has not tried he is not in a position to make such an assertion. Neither the respondent nor the tribunal has been given any details about the cousin and his family or why they would be in a position to influence the authorities. The appellant's witness statement is noticeably vague on the point. The appellant was quite unable in evidence to me to explain the basis of his claim that he still feared his cousin after 17 years apart from the cousin with no contact between them. There is no valid reason given why the appellant could not move to any part of Morocco he chose. Internal relocation although not, I find, necessary is available to the appellant as an option.

22. I find that the appellant has fabricated his claim. Overall I do not find the appellant is a credible witness and I do not accept the claims he has put forward that he is in fear of a cousin and has had to move around Europe to evade the cousin. The appellant is an economic migrant who has fabricated a story in an attempt to remain in the United Kingdom. I therefore dismiss the appellant's claim for international protection made under article 3 of the Human Rights Convention.
23. In relation to the appellant's claim under article 8, the appellant does not claim to have a family life in this country. He relies instead on his private life and that is on the basis of the number of years that he has been here some of which were without the knowledge of the authorities. His presence in this country has been at best precarious but otherwise unlawful. Little or no weight can be ascribed to it when carrying out the balancing exercise that is balancing the legitimate interests of the state against the rights of the individual.
24. In terms of the **Razgar [2004] UKHL 27** step by step approach, the respondent's decision would undoubtedly interfere with the appellant's private life by requiring him to return to Morocco. That decision would be in accordance with the lawful aim of immigration control because the appellant has flouted immigrant migration control by entering illegally and working unlawfully. The question remains whether the interference is proportionate to the lawful aim undertaken. I find in this case that it is. There is very little indeed that can be put on the appellant's side of the scales. I have found him to be an untruthful witness given the very strong public interest in removing the appellant in the light of his failure to comply with immigration rules.
25. The appellant claims that he would face significant obstacles in he were returned to Morocco. It is difficult to see what they might be. He speaks Arabic and gave his evidence to me through an Arabic interpreter. He spent the first 25 years of his life in the country. He is still in touch with his family who could also support him on return if that was necessary. I do not accept that after 17 years the appellant can show any risk from the cousin even if his account of the original dispute with the cousin (while the appellant was still in Morocco) is true. There would be no harsh consequences for the appellant who has been able to find work in a number of foreign countries and could reasonably be expected to find work on return to Morocco. I therefore dismiss the appellant's appeal against the respondent's decision.

Notice of Decision

I remake the decision in this case by dismissing the appellant's appeal against refusal of international protection and refusal of his human rights claim

Appellant's appeal dismissed

Signed this 6th day of September 2024

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Judge Woodcraft
Deputy Upper Tribunal Judge

Annex



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: UI-2024-000880
First-tier Case Number: PA/51102/2023

THE IMMIGRATION ACTS

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Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**KA
(Anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Mustafa, Counsel instructed by Local Solicitors Ltd
For the Respondent: Mr K Ojo, Home Office Presenting Officer

DECISION AND REASONS FOR FINDING AN ERROR OF LAW

Heard at Field House on 7 May 2024

The Appellant

1. The appellant is a citizen of Morocco born on 20 July 1981. He appeals against a decision of the First-tier Tribunal dated 25 July 2023 to dismiss his appeal against a decision of the respondent dated 7 February 2023. The respondent had refused the appellant's application for international protection.

2. **Anonymity.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials S E. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant.

Failure to comply with this order could amount to a contempt of court.

The Appellant's Case

3. The appellant argued that he was at risk from his cousin in Morocco because he had an arrangement with his cousin to split the profits of large decorating and maintenance jobs. He was paid 7-8 million dirham for a job that his cousin worked on. He refused to share the profits as normal with his cousin. He subsequently received threats of violence from the cousin and had to go into hiding in Casablanca before leaving for Europe. His cousin was very powerful and the Moroccan authorities would not protect the appellant from the cousin.

The Decision at First Instance

4. The judge did not find the appellant a credible witness. This was not a refugee convention appeal and the judge did not accept that the appellant had any kind of difficulty with the cousin or that the appellant had gone into hiding. At the beginning of the determination at [2] the judge described the appellant incorrectly as: "a national of Ethiopia and is from the Amharic ethnic group. He is a practicing Orthodox Christian." In conclusion at [22] the judge stated, before dismissing the claim:

"I am satisfied that there will not be 'unjustifiably harsh consequences' to the appellant for the reasons I have already identified above if he were to [be] returned to Ethiopia now. He has not been able to show he is at risk in Ethiopia. He has spent the majority of his life there. He would find no difficulty in being able to re-integrate into Ethiopian society at the first available opportunity."

The Onward Appeal

5. The appellant appealed this decision making two main points. The first was that the judge had misdirected himself as to the appellant's nationality, ethnicity and religion. Secondly the judge had failed to provide adequate reasons for disbelieving the appellant's claim to have gone into hiding in Casablanca when the respondent had explicitly accepted that claim and the profit sharing arrangement in the refusal letter. The First-tier tribunal granted permission to appeal on both points.

The Hearing Before Me

6. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there

was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.

7. In oral submissions counsel for the appellant relied on the grounds and his skeleton argument. There had been a material mis-direction by the judge. The determination should be set aside and reheard. Nationality was a significant factor in this case. As to ground 2 the appellant had never mentioned there was a land dispute and it was not clear from where the judge had derived this claim. The judge had no jurisdiction to reopen concessions made by the respondent in the refusal letter. When facts were agreed between the parties it was only in exceptional circumstances that a judge could look behind the agreement. If the judge was going to do that they had to draw representatives' attention to that possibility. The judge's lack of reasoning was a material error of law.
8. In reply the respondent accepted that there were errors in the determination in relation to both grounds of the onward appeal but this was one of those exceptional circumstances where the errors could be overlooked. The appellant had been inconsistent in his evidence and one had to look at the substance of the actual decision made by the judge. It was not in dispute that the appellant's claim did not engage the refugee convention. The appellant was working as a labourer with his cousin. There was no evidence that the cousin had any power to influence the authorities. If one ignored [2] of the determination there would be no issue in the case.
9. [22] related to Article 8 which however was not engaged in this case. The judge had dealt with the appellant's situation in Morocco. Even taking the appellant's case at its highest where was the evidence that the cousin had any ability to find the appellant if the appellant were to be returned to Morocco? The judge had referred to the appellant's cousin visiting the appellant's family as a guest. This was a straightforward case.
10. Finally in conclusion counsel said that at [22] the judge had stated the appellant was not able to show any risk which meant that risk had been considered, albeit wrongly, by the judge in that paragraph. The core point was whether the judge's consideration of credibility was or was not correct. The appellant had said he had been hiding in Casablanca from his cousin which brought matters back to an assessment of the credibility of the appellant. One could not get round the errors by just substituting references to Ethiopia with references to Morocco because the whole credibility assessment had not been done correctly.

Discussion and Findings

11. This appeal did not concern the refugee convention but rather was a claim to fear non- state actors. As a result, the question of the appellant's credibility lay at the heart of the appeal. What the judge had to decide was whether the appellant could show that he was at real risk if returned to Morocco from the cousin with whom he said he had fallen out. The judge

did not consider the claim to be a strong one pointing to a number of what the judge characterised as inconsistencies in the appellant's account.

12. The difficulty in this case was that the determination of the judge itself contained certain contradictions. The appellant was not a citizen of Ethiopia nor was he a Christian by religion, he was a citizen of Morocco and a Muslim by religion. There was indeed no risk to the appellant if he were to be returned to Ethiopia but that was not a realistic option given the appellant's nationality. Because of the mistaken reference at [22] to return to Ethiopia, the judge did not confirm at the end of the determination whether there was or was not a risk to the appellant if returned to Morocco.
13. It is not clear where the reference to a land dispute in the determination came from as the appellant's claim was that he and his cousin had fallen out over the share of profits from a decorating business. Whether or not a claim is a strong one or one lacking in merit, an appellant is entitled to a careful assessment of the strengths and weaknesses of the claim put before the tribunal. Regrettably due to the errors in the determination at [2] and [22] particularly but also in relation to a land dispute the determination is unsafe. The mis-directions which have occurred at various places in the determination are such that the determination cannot stand because of material errors of law and must be set aside.
14. This leaves the issue of where the resumed hearing should take place. I have already indicated that this is not a claim under the refugee convention. The issues in the case are fairly narrow and are mainly to do with whether the appellant does indeed fear his cousin and/or whether there is any substance to the claim that the appellant could not internally relocate within Morocco to avoid his cousin. Those are matters which the Upper Tribunal is in a position to deal with.
15. I therefore set aside the determination at first instance and direct that the appeal be retained in the Upper Tribunal and reheard on the first available date with a time estimate of 90 minutes. No findings from the First-tier determination are preserved. I give leave to the appellant to file and serve further evidence at least 14 days before the resumed hearing. The appellant should attend the hearing to be questioned. An Arabic interpreter is required on the next occasion.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I direct that the appeal be reheard in the Upper Tribunal on the first available date with a time estimate of one hour and 30 minutes.

Appellant's onward appeal allowed to that extent.

Signed this 13th day of May 2024

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Judge Woodcraft
Deputy Upper Tribunal Judge